

Before Permod Kohli, J.

**JIT SINGH, EX-SUPERINTENDENT
OF POLICE—Petitioner**

versus

STATE OF PUNJAB AND OTHERS—Respondents

**C.W.P. No. 4335 of 1986 and
C.W.P. No. 11532 of 1988**

24th September, 2009

Constitution of India, 1950—Arts.226 & 311(2)(b)—Charges of dereliction of duties against police officials—Dismissal from service—Dispensing with enquiry by invoking proviso (b) to Art.311(2)—Govt. constituting Judicial Commission of Inquiry to look into circumstances leading to death of Sant Harchand Singh Longowal—Orders of dismissal passed without findings of Judicial Commission of Inquiry—No mention in order of any ground for dispensing with enquiry—Enquiry Commission exonerating petitioners while holding they did not fail in discharge of their duties—Reasons for dispensing with enquiry that witnesses will not come forward due to fear of reprisals by terrorists not based upon any material—Presumptuous opinion of authorities without there being any material on record—Opinion must be based upon objective criterion and identifiable material—Petition allowed, dismissal orders set aside.

Held, that it is not the case of respondents that the petitioners were involved in killing of Sant Harchand Singh Longowal. They are charged for dereliction of duties. Hence all police officials were deputed, as has come in evidence before the Commission of Enquiry. It is not understandable as to how militants could be interested in action against the petitioners or holding of enquiry against them. Therefore, the reasons recorded that witnesses will not come forward due to fear of reprisals by the terrorists does not seem to be based upon any material. From the report of the Commission of Enquiry, it is found that a large number of persons have deposed before the Commission fearlessly and thus to say that the witnesses are not likely to depose truly does not seem to be based upon any material. From the

record produced, it appears that it is only the presumptuous opinion of the authorities without there being any material on record.

(Para 17)

Further held, that disciplinary authority is not expected to dispense with the departmental enquiry merely because it does not want to hold such enquiry or in an arbitrary manner or for ulterior motives or to overcome the political or other pressure at the relevant time. Holding up departmental proceedings for any kind of ~~dereliction~~ dereliction of duty is a rule and its dispensation is an exception. The exception to the rule is enumerated under proviso to Article 311(2) (b) of the Constitution of India. There must be valid reasons to dispense with the enquiry based upon material. No material has been placed before this Court to substantiate the grounds/opinion of the Advisor to Governor for dispensing with the departmental enquiry which is otherwise a rule and a basic right of a government servant. The opinion must be based upon objective criterion and identifiable material and not merely on the presumptuous opinion of the authorities. I do not find that the grounds projected are sufficient or at least supported with the material on record to dispense with the enquiry.

(Para 18)

D. S. Patwalia, Advocate and Amit Chopra, Advocate.

Yatinder Sharma, A.A.G., Punjab.

PERMOD KOHLI, J.

(1) This order will dispose of CWP nos. 4335 of 1986 and 11532 of 1988 as similar questions of law and facts arise in both the writ petitions.

(2) Petitioner—Jit Singh, in the rank of S.P./Assistant Commandant and petitioner—Balwant Singh in the rank of D.S.P. were dismissed from service under Proviso (b) to Article 311(c) of the Constitution of India, without holding an enquiry. Relevant order is reproduced as under :—

ORDER

Whereas

1. Jit Singh, S.P./Assistant Commandant 27th B. N. PAP
2. Balwant Singh, D.S.P.
3. Kewal Singh, Head Constable No. 13/726
4. Kartar Singh, Head Constable No. 13/86 and
5. Gurdev Singh, Constable No. 80/523

were on security duty with late Sant Harchand Singh Longowal on 20th August, 1985 at village Sherpur, District Sangrur, and

Whereas from the material available, the President of India is satisfied that the aforesaid police personnel were remiss in their duty and did not take necessary precautions for the security of late Sant Harchand Singh Longowal, and

Whereas the aforesaid security lapse on their part is so grave as to render them unfit for police service, and

Whereas the President of India is satisfied that it is not reasonably practicable for the reasons, separately recorded as provided in Proviso (b) to Article 311(2) of Constitution of India, to hold an enquiry.

Now, therefore, the President of India is pleased to order the dismissal of S. Shri

1. Jit Singh, S.P./Assistant Commandant 27th B. N. PAP
2. Balwant Singh, D.S.P.
3. Kewal Singh, Head Constable No. 13/726
4. Kartar Singh, Head Constable No. 13/86 and
5. Gurdev Singh, Constable No. 80/523

with immediate effect.

(Sd/-)

N. N. VOHRA,
Financial Commissioner and

Chandigarh :
The 4th September, 1985"

Secretary to Government, Punjab,
Deptt. of Home Affairs and Justice.

(3) This order has been assailed in the above mentioned two petitions. The factual background as mentioned in the writ petitions are noticed as under :—

(4) In CWP No. 11532/1988, Balwant Singh-petitioner joined the police service on 1st April, 1956 as Assistant Sub-Inspector of Police and was promoted to the rank of Deputy Superintendent of Police in May, 1973.

He has successfully qualified 12 police courses, including Anti Explosive Substances Specialized Course, Anti Insurgency etc. as per details indicated in Annexure P-1. From the perusal of the said Annexure, it appears that this Officer has practically undergone all relevant police courses to equip a police officer in all fields of police action. He has also earned about two dozens commendation certificates with cash awards, appreciation letters, and police medals, including on the Republic Day of the year 1980 a Police Medal for Meritorious police service. It is stated that unfortunately, on 2nd July, 1985, while the petitioner was working as Deputy Superintendent of Police, C.I.D., his young son committed suicide and the petitioner was in great distress. However, he was called for to provide security cover to late Sant Harchand Singh Longowal during his visit from Sangrur to Chandigarh and back. In response to the call of duty, the petitioner made himself available for the duty on 28th July, 1985. He participated in an Officers' meeting held in P.W.D. Rest House at Sangrur attended by M.C. Trikha, I.P.S. and K.P.S. Gill, Gurbachan Jagat, I.P.S., Deputy Inspector General of (Security), S. S. Bains, I.P.S., S.S.P. Sangrur and other police officers. The petitioner was made in charge of escort guards during road journeys and functions/meetings enroute. On 20th August, 1985, late Sant Harchand Singh Longowal left Gurdwara Kambowal (Longowal) early in the morning for Chandigarh to address a public meeting at village Sherpur in District Sangrur. It is stated that instead of Gurbachan Singh Mann, S.P., Shri Jit Singh, S.P. was made incharge of security at Scheduled Public Meetings through Advance Ring Road, who alongwith his team reached village Sherpur for making necessary arrangements at the Gurdwara Sherpur. The petitioner escorted Sant Harchand Singh Longowal in two escort cars from village Longowal to Chandigarh and on his way back from Chandigarh to Village Sherpur where he reached at about 3.30 p.m. when the public meeting attended by about 5000 persons was already in progress. Sant Ji was accordingly escorted upto the stage by the Escort Party, where 30/35 persons were already seated on the stage and still more were sitting/standing in the Varandah at the rear of the stage. After completion of public meeting at about 5.30 p.m. when Sant Ji was being conferred with Saropa, some one from the gatherings fired 5/6 rounds towards the stage, as a result of which late Sant Ji fell down the stage. The petitioner though was stationed alongwith his escort party as a reserve in the Gurdwara premises rushed to the stage and with the help of some persons around late Sant Ji was

shifted to Civil Hospital, Sangrur. It is stated that the petitioner donated blood to Sant Harchand Singh Longowal Ji. However, unfortunately Sant Harchand Singh Longowal Ji succumbed to his injuries in the Hospital after three hours. The petitioner received the impugned order dated 4th September, 1985 (Annexure P-34) referred to above whereby, the petitioner, Jit Singh, S.P., two Head Constables and one Constable were ordered to be dismissed from service. The petitioner submitted a Memorial-cum-Review Petition dated 30th September, 1985 (Annexure P-35) to the Governor of Punjab against his dismissal.

(5) The State Government *vide* its Notification, dated 11th December, 1985 constituted a Judicial Commission to enquire into the circumstances leading to the assassination of late Sant Harchand Singh Longowal. The Commission was headed by Hon'ble Mr. Justice Gurnam Singh, a retired judge of Punjab and Haryana High Court.

(6) In CWP No. 4335 of 1986, the career profile of petitioner—Jit Singh, the then S. P. is also given. This Officer joined the Police Service on 21st May, 1963 in the rank of Inspector and after earning various promotions came to be promoted as Superintendent of Police in April, 1984. It is stated that the petitioner held various significant assignments in Punjab Armed Police, C.I.D., Excise, Vigilance, Government Railway Police and has also earned various appreciation letters and cash rewards including police award for meritorious services on 26th January, 1980. It is further stated that on 10th August, 1985, the petitioner took over as Superintendent of Police (Security Staff) for the security of late Sant Harchand Singh Longowal. He was informed that on 20th August, 1985, Sant Ji was to address a public meeting at village Sherpur, District Sangrur. The fact was reported to the D.I.G., Patiala range and S.S.P., Sangrur. The petitioner is stated to have reached Sherpur at about 11.00 a.m. alongwith his staff comprising of one Sub Inspector, two Head Constables and eight Constables all from Punjab Armed Police. All the members of the petitioner staff performed their duties in plain clothes as per orders of Senior Officers. This team was supposed to work as an advance ring round for Sant Ji. They were deployed at strategic points in the public meeting, near the Dias and on the Dias. This deployment was in addition to police and security arrangements made by the District Police. It is stated that there were already two contingents of District Police and C.R.P.F. headed by Mr. Ram Sarup,

Deputy Superintendent of Police of Sangrur District on the post to make necessary police and security arrangements at the public meeting. In fact there were about 100 men of Local Police/C.R.P.F. on duty in and around Pandal where the public meeting was held. There were about 6000 persons in the Pandal. Neither it was possible nor desirable to carry out a thorough checking of the audience already assembled there, as the public meeting was already going on when the petitioner reached the venue of the public meeting at 11 a.m. Deputy Superintendent of Police Ram Sarup alongwith his men was on the spot prior to the reaching of the petitioner for the purpose of making necessary police and security arrangements. It is stated that when at 3.30 p.m. Sant Ji arrived in the meeting, the petitioner and Deputy Superintendent of Police Incharge Internal Security Ring, Shri Balwant Singh escorted Sant Ji to the Dias. Thereafter the petitioner kept on moving in the public meeting in order to keep his advance ring round team members on duty alert and also spot any mischief mongers amongst the gathering. It was at about 5.30 p.m. When the public meeting was over and people had started dispersing that firing started from the different sides of the Pandal and Sant Ji was shot and injured. It is also stated that although the unfortunate incident could not be averted, yet both the culprits were apprehended by Sub Inspector Gurcharan Singh and Constable Daljit Singh members of the petitioner's team of Advance Ring Round. *Vide* the impugned order, the petitioner alongwith Balwant Singh, Dy. S. P. And other members named here-in-above were dismissed from service. It is also mentioned that five members of the petitioner's team of 11 police officers, including Sub Inspector who managed to apprehend one of the culprits was also placed under suspension and departmental enquiry was ordered against them.

(7) There is also reference to the constitution of Judicial Commission of Enquiry head by Justice Gurnam Singh *vide* notification dated 11th December, 1985 (Annexure P-36 with CWP No. 11532/1988). The Commission was asked to enquire into the following matters :—

- “(a) the sequence of events leading to and all the facts relating to the assassination of Sant Harchand Singh Longowal ;
- (b) Whether the crime could have been averted and whether were lapses or dereliction of duty in this regard on the part of any of the individuals on security duty at the time of the commission of the crime and other individuals responsible for the security of late Sant Harchand Singh Longowal ;

- (c) the deficiencies, if any, in the security system and arrangements as prescribed or as operated in practice which might have facilitated the commission of crime.
- (d) the deficiencies, if any, in the procedure and measures as prescribed, or as operated in practice in attending to and providing medical attention to late Sant Harchand Singh Longowal after the commission of crime, whether there was any lapse or dereliction of duty in this regard on the part of individuals responsible for providing such medical attention.
- (e) Whether any person or persons or agencies were responsible for continuous preparing and planning and assassination and whether there was any conspiracy in this behalf and, if so, all its ramifications.”

(8) Even when the Commission of Enquiry was conducting the enquiry, the petitioners were dismissed *vide* the impugned order. The petitioners have challenged the impugned order on variety of grounds. However, the validity of the impugned order is questioned primarily on the following grounds :—

- (a) Whether the order dispensing with the enquiry is legal and valid ?
- (b) Whether the petitioners would have been dismissed without the findings of Judicial Commission of Enquiry ?
- (c) Whether the action against the petitioners is arbitrary and discriminatory and violative of Articles 14 and 16 of the Constitution of India as departmental proceedings were initiated against some members whereas the petitioners have been dismissed from service without holding any departmental enquiry ?
- (d) Whether the impugned order is sustainable, in view of the exoneration of petitioners—Balwant Singh by Judicial Commission of Enquiry.

(9) I have heard learned counsel for the parties at length and perused the paper-book.

(10) The State-respondent in its reply filed by Assistant Inspector General of Police admitted the service profile of the petitioners and also the specific averments of their meritorious service before the incident of assassination of late Sant Ji. It is, however, stated that the petitioners being responsible for security of Sant Ji, they were negligent in performing their duties and thus have been dismissed from service.

(11) In the reply by the State in CWP No. 4335 of 1986, it is stated that no security man was deployed in the Verandah place where Sant Ji was addressing the public meeting and shots were fired from Verandah which proved fatal. It is stated that the petitioners being primarily responsible for the necessary security of late Sant Ji and being remiss in their duties have been dismissed from service whereas some of the officials whose gravity was lesser have been departmentally dealt with. Admittedly, no ground for dispensing with enquiry has been stated in the impugned order, though it contains a stipulation that the President of India is satisfied that it is not reasonable and practicable for the reasons recorded to hold an enquiry. In view of the stipulation in the impugned order, *vide* inter-locutory order dated 31st January, 2009, Mr. Yatinder Sharma, A.A.G., Punjab was asked to produce the relevant record containing the reasons of passing the impugned order. From the record it appears that the Advisor to Governor recorded following reasons :—

“3. The personnel involved being police personnel, witnesses are not likely to depose truly in their presence. Moreover the murder having been committed by terrorists in a public meeting the witnesses are not likely to come forward to depose due to fear of reprisals by the terrorists. The exigencies of the situation necessitate immediate action and the matter cannot be kept pending till the situation improves. Strict and prompt action is called for to avoid the speaking of such lapses on the part of the police. Under these circumstances, it is not reasonably practicable to hold a regular enquiry against the guilty police officials.

- (4) The matter was discussed with Additional Director Prosecution, who confirmed that in view of the facts of the case, proposed dismissal could be ordered by taking recourse to proviso (b) to Article 311(2) of the Constitution of India.

(Sd.)

The 3rd September, 1985”

Advisor (S).

(12) The respondents have also produced the inquiry report of Justice Gurnam Singh, Commissioner of Enquiry constituted to go into the circumstances leading to the death of Sant Harchand Singh Longowal. One of the terms of reference of the Enquiry Commission was as under :—

“XXX XXX XXX XXX

- (b) Whether the crime could have been averted and whether there were any lapses or dereliction of duty in this regard and on the part of any of the individuals on security duty at the time of the Commission of the crime and other individuals responsible for the security of late Sant Harchand Singh Longowal.....”

(13) The Enquiry Commission, according to the statements of large number of persons including the police officials, the Commission specifically exonerated petitioner—Balwant Singh saying that Balwant Singh did not fail in discharge of his duties. Even though some of the police officials expressed their apprehension regarding the antecedents of Jit Singh—petitioner, however, the Commission found that he was a competent and meritorious police officer and no responsibility was fixed upon him. Thus, it appears that both the petitioners were exonerated by the Commission of Enquiry constituted by the Government to find out the dereliction of duty of the security officials deployed for the security of late Sant Harchand Singh Longowal. Before passing the impugned order, the Advisor to Governor had dispensed with the enquiry saying that persons involved being police officials, witnesses are not likely to depose truly in their presence. It is further stated that the murder having been committed by the terrorists in public meeting, the witnesses are not likely to come forward to depose due to fear of reprisals by the terrorists. The veracity of the aforesaid grounds is to be tested on the touchstone of the law laid down by the Hon’ble Supreme Court.

(14) The power of judicial review where the competent authority formulated the opinion to dispense with the enquiry by invoking proviso to Article 311 (b) of the Constitution of India was examined by Hon'ble Supreme Court in catena of judgments. In the case of **Chief Security Officer and Ors versus Singasan Rabi Das**, (1) Hon'ble Supreme Court made following observations :—

“5. In our view it is not necessary to go into the submissions made by Dr. Anand Prakash because we find that in this case the reason given for dispensing with the enquiry is totally irrelevant and totally insufficient in law. It is common ground that under rules 44 to 46 of the said Rules the normal procedure for removal of an employee is that before any order for removal from service can be passed the employee concerned must be given notice and an enquiry must be held on the charges supplied to the employees concerned. In the present case the only reason given for dispensing with the enquiry was that it was considered not feasible or desirable to procure witnesses of the security/other Railway employees since this will expose these witnesses and make them ineffective in the future. It was stated further that if these witnesses were asked to appear at a confronted enquiry they were likely to suffer personal humiliation and insults and even their family members might become targets of acts of violence. In our view these reasons are totally insufficient in law. We fail to understand how if these witnesses appeared at a confronted enquiry, they are likely to suffer personal humiliation and insults. These are normal witnesses and they could not be said to be placed in any delicate or special position in which asking them to appear at a confronted enquiry would render them subject to any danger to which witnesses are not normally subjected and hence these grounds constitute no justification for dispensing with the enquiry. There is total absence of sufficient material or good grounds for dispensing with the enquiry.....”

(15) In the case of **Jaswant Singh versus State of Punjab, (2)** while dealing with the scope of Article 311(2) (b) of the Constitution of India, the Hon'ble Supreme Court made following observations :—

“The decision to dispense with the departmental inquiry cannot be rested solely on the ipse dixit of the concerned authorities. When the satisfaction of the concerned authority is questioned in a Court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim and caprice of the concerned officer. In the instant case it was alleged that the delinquent police officer instead of replying to show cause notice instigated his fellow police officials to disobey the superiors. It is also alleged that he threw threats to beat up the witnesses and the Inquiry Officer, if any departmental inquiry was held against him. No particulars were given. It was not shown on what material the concerned authorities had come to the conclusion that the delinquent had thrown threats. The satisfaction of the concerned authority was found to be based on the ground that the delinquent was instigating his colleagues and was holding meetings “with other police officials with a view to spread hatred and dissatisfaction towards his superiors. It was not shown that the concerned authority had verified the correctness of information leading to the said allegation.”

(16) Considering the aforesaid judgements, the facts of the present case need to be considered.

(17) At the first place, the Enquiry was/is to be conducted relating to the dereliction of the duty of the petitioners. It is not the case of the respondents that the petitioners were involved in killing of Sant Harchand Singh Longowal. They are charged for dereliction of duties. Hence all police officials were deputed, as has come in evidence before the Commission of Enquiry. It is not understandable as to how militants could be interested in action against the petitioners or holding of enquiry against them. Therefore, the reasons recorded that witnesses will not come forward due to fear of reprisals by the terrorists does not seem to be based upon any material.

From the report of the Commission of Enquiry, it is found that a large number of persons have deposed before the Commission fearlessly and thus to say that the witnesses are not likely to depose truly does not seem to be based upon any material. From the record produced, it appears that it is only the presumptuous opinion of the authorities without there being any material on record.

(18) It is settled proposition of law that disciplinary authority is not expected to dispense with the departmental enquiry merely because it does not want to hold such enquiry or in an arbitrary manner or for ulterior motives or to over-come the political or other pressure at the relevant time. Holding up departmental proceedings for any kind of dereliction of duty is a rule and its dispensation is an exception. The exception to the rule is enumerated under proviso to article 311 (2) (b) of the Constitution of India. There must be valid reasons to dispense with the enquiry based upon material. No material has been placed before this Court to substantiate the grounds/opinion of the Advisor to Governor for dispensing with the departmental enquiry which is otherwise a rule and a basic right of a government servant. The opinion must be based upon objective criterion and identifiable material and not merely on the presumptuous opinion of the authorities. I do not find that the grounds projected are sufficient or at least supported with the material on record to dispense with the enquiry.

(19) For the above reasons, both the writ petitions are allowed and the impugned orders dismissing the petitioners from service are hereby set aside. The petitioners are directed to be reinstated into service forthwith. However, the petitioners shall not be entitled to any financial benefits during the interregnum they were out of service though the period of dismissal shall be counted towards their length of service and shall be considered a part of the qualifying service for determination of the pensionary benefits, fixation of pay, which, *inter-alia*, includes the notional benefit of increments, revision of pay and promotional aspects as well. In the event the petitioners have achieved the age of superannuation, they will be entitled to pensionary benefits accordingly.

(20) Copy of this order be placed on record on each concerned file.

R.N.R.